

## Message Text

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ACTION ARA-06

INFO OCT-01 SS-14 ISO-00 L-01 EB-03 TRSE-00 CIEP-01 NSC-05

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O 130539Z NOV 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 7603

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 9382

LIMDIS

FOR ARA- WILLIAM ROGERS; L - MARK FELDMAN; EB - THOMAS ENDERS,  
TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE; COMMERCE - DAN  
ARRILL

EO 11652: GDS

TAGS: EINV, EMIN, EIND, PFOR, PE

SUBJECT: MARCONA - WEDNESDAY COMMISSION MEETING

1. SUMMARY: U.S. GROUP PRESENTED REVISED PROPOSAL. AL-  
THOUGH SOME TECHNICAL ASPECTS WERE DISCUSSED. GOP COMMISSION  
INDICATED THAT SPECIAL ESCROW ACCOUNT FEATURE WAS NOT AC-  
CEPTABLE TO MINISTERS BECAUSE IT SUGGESTED GOP WAS NOT ACTING  
IN GOOD FAITH. SUCH A GUARANTY WAS NOT APPROPRIATE FOR A  
GOVERNMENT-TO-GOVERNMENT AGREEMENT; THE MOST THAT THE GOP  
COULD AGREE TO WAS THAT IF AUDIT RESULTED IN A POSTIIVE FIGURE OF  
COMPENSATION FOR MARCONA, GOP WOULD PAY THAT FIGURE. DIS-  
CUSSION IN COMMISSION OF MARCONA'S DEBTS AND PURSUIT OF  
LEGAL STEPS, ALONG WITH EMPHASIS ON AUDIT, LEAVES TUESDAY'S  
\$29 MILLION FIGURE WITHOUT FIRM FOUNDATION. U.S. GROUP  
INDICATED ITS DEEP SENSE OF DISAPPOINTMENT AT GOP  
POSITION, FAILURE OF THESE NEGOTIATIONS TO MOVE FORWARD  
TO ACCEPTABLE SOLUTION. FISHLOW, WITH FULL U.S. GROUP  
WILL MAKE SAME PITCH TO PRIME MINISTER  
THIS EVENING. END SUMMARY.

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2. FISHLOW BEGAN MEETING BY DISTRIBUTING REVISED U.S. PROPOSAL (SEPTEL). HE EXPLAINED TWO CENTRAL ISSUES, PARTICIPATION OF MARCONA IN ARRANGEMENTS (PARA C) AND ESCROW ACCOUNT (PARA D). THE NEW TEXT OF PARA C IS DESIGNED TO ELIMINATE ALL REFERENCES TO MARCONA, AS DESIRED BY GOP, A RESULT THAT WAS NOT EASY TO ACCOMPLISH. AT THE SAME TIME, IT GIVES MARCONA AN OPPORTUNITY TO REACH SATISFACTORY AGREEMENTS WITH THE JAPANESE TO LEASE MARCONA'S SHIPS IN THE CASE OF FOB SALES TO TRADITIONAL CUSTOMERS; THIS APPROACH COULD EVENTUALLY BE AS BASIS FOR GREATER MARCONA FLEXIBILITY WITH RESPECT TO A FINAL SOLUTION. MARCONA, HE NOTED, ACCEPTED THIS LANGUAGE BASED ON OUR ASSURANCE THAT GOP IS IN GOOD FAITH IN ITS DESIRE TO FIND A PROMPT FINAL SOLUTION.

3. ON THE PERCENTAGE OF THE FOB PRICE TO BE PLACED IN ESCROW (33.6 PERCENT VICE 5.6 PERCENT IN THE GOP PROPOSAL) FISHLOW SAID THAT HE HAD USED THE GOP APPROACH, REALIZING THAT ANY FIGURE AGREED TO BY THE GOP WOULD HAVE TO WITHSTAND PUBLIC SCRUTINY. HE ALSO NOTED THAT FOR THREE MONTH PERIOD OF INITIAL AGREEMENT, MOST OF SALES WOULD BE FROM INVENTORY RATHER THAN NEW PRODUCTION AND THUS WOULD NOT INVOLVE ADDITIONAL PRODUCTION COSTS. MANY OF COSTS ARE SOL COSTS, THE CONVERSION OF WHICH IS NOT FULLY REFLECTED BY OFFICIAL EXCHANGE RATES. HE NOTED, FINALLY, THAT MARCONA WAS MAKING A SUBSTANTIAL SACRIFICE, I.E., ITS EXISTING CONTRACTS.

4. FISHLOW PRICE FIGURE (\$11.34 TON FOB) BASED ON 1975 SECOND QUARTER STATISTICS, INCREASED BY 7 PERCENT TO REFLECT CURRENT INCREASES, INCLUDING INFLATION. THIS REVISED FOB PRICE (\$12.13 PER TON) LESS COSTS (GOP FIGURES, \$9.05) RESULT IN NET CASH FLOW OF \$4.08, OR 33.6 PERCENT OF THE PRICE. THIS IS THE TRUE CASH FLOW AND REPRESENTS THE INCREMENT OF EARNINGS BROUGHT ABOUT BY THE RESUMPTION OF ORE SALES. IT PERMITS, AS WELL, FULL CONVERSION OF DOMESTIC SOL COSTS INTO FOREIGN EXCHANGE; WHILE INVENTORIES ARE THE BASIS OF SALES, GOP NEVERTHELESS GETS 67 PERCENT OF THE BENEFIT DIRECTLY. HE NOTE THAT MARCONA HAD ALREADY GIVEN ITS APPROVAL (AS REQUIRED IN PARA B) AND THAT HE

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HAD EVERY REASON TO BELIEVE WASHINGTON'S APPROVAL WOULD BE FORTHCOMING SHORTLY. HE URGED GOP TO TAKE THIS OPPORTUNITY TO IMPLEMENT A MECHANISM THAT HAS IN IT ELEMENTS OF A FINAL SOLUTION, AND WILL PERMIT GOP TO TAKE FULL ADVANTAGE OF THE FACILITY THAT IT HAS NATIONALIZED.

5. DE LA PUENTE SAID THAT AFTER THE TUESDAY AFTERNOON SESSION HE HAD BRIEFED THE FOREIGN MINISTER; THIS

MORNING THE COMMISSION HAD MET FOR SOME TIME WITH KEY CABINET OFFICIALS AND DISCUSSED THE PROPOSALS FULLY. ALL AGREED, HE SAID, THAT IF THE AGREEMENT HAD BEEN BETWEEN PRIVATE COMPANIES IT WOULD HAVE BEEN ACCEPTABLE; HOWEVER, THERE ARE POLITICAL ELEMENTS--THE ESCROW ASPECT--THAT ARE INCONSISTENT WITH A GOVERNMENTAL PARTICIPATION. THE ESCROW ACCOUNT, THE MINISTERS FELT, REFLECT ADVERSELY ON THE GOP'S GOOD FAITH, SINCE IT WAS IN EFFECT A DEMAND FOR A GUARANTY. THE EMBARGO WOULD BE ENDED, BUT ONLY AT AN UNACCEPTABLE POLITICAL PRICE. THUS PARA D RAISES A BASIC, FUNDAMENTAL PROBLEM OF SUBSTANCE WHICH CAN BE SOLVED BY DRAFTING CHANGES. THE MOST THE GOP COULD DO IN THIS CONTEXT WOULD BE TO AGREE IN WRITING THAT IF AS A RESULT OF THE AUDIT, A FIGURE OF X WERE DETERMINED TO BE THE "JUST PRICE", THE GOP WOULD PAY THAT SUM TO MARCONA. THE OTHER KIND OF PROVISION COULD NOT BE ACCEPTED IN AN INTERGOVERNMENTAL AGREEMENT BECAUSE OF THE PRESSURE OF PUBLIC OPINION. DE LA PUENTE PRESENTED ORALLY A PARAGRAPH ALONG THE LINES INDICATED ABOVE, AND REITERATED THE NECESSITY OF MARCONA'S PURSUING ALL APPROPRIATE LEGAL ACTIONS UNDER PERUVIAN LAW RESPECTING THE VARIOUS DEBTS.

6. DE LA PUENTE, IN AN OBVIOUS ATTEMPT TO SEPARATE THE TECHNICAL DISCUSSION FROM ITS POLITICAL OVERTONES, THEN ASKED YATACO TO DISCUSS ECONOMIC RATIONALE FOR THE GOP'S 5.6 PERCENT FIGURE. THE BRIEF PRESENTATION NOTED THAT GOP HAD USED MARCH 1975 SALES FIGURES (THE HIGHEST AVAILABLE) WHILE RETAINING 1974 COSTS IN ORDER TO OBTAIN THE MOST FAVORABLE RESULTS IN THE CALCULATIONS. DE LA PUENTE EMPHASIZED THAT THE FIGURES WERE ONLY ILLUSTRATIVE, THAT THE REAL PROBLEM WAS THE ONE OF PRINCIPLE REFERRED TO EARLIER. HE PREDICTED THAT THE PRIME MINISTER WOULD REPEAT AT THIS EVENING'S MEETING THE CONTENTION THAT THE

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GOOD FAITH OF GOVERNMENTS DOES NOT REQUIRE A GUARANTY OF A CONTRACTUAL NATURE, AND THAT PERU WILL COMMIT ITSELF TO PAY THE AMOUNT--IF IT IS POSITIVE--TO BE FOUND OWING TO MARCONA BY THE COMPLETE AUDIT.  
DEAN

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ACTION ARA-06

INFO OCT-01 SS-14 ISO-00 L-01 EB-03 TRSE-00 CIEP-01 COME-00

NSC-05 NSCE-00 INR-05 CIAE-00 SSO-00 INRE-00 SP-02

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 7604

C O N F I D E N T I A L SECTION 2 OF 2 LIMA 9382

LIMDIS

FOR ARA- WILLIAM ROGERS; L - MARK FELDMAN; EB - THOMAS ENDERS,  
TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE; COMMERCE - DAN  
ARRILL

7. AFTER A TWENTY MINUTE RECESS FOR WASHINGTON GROUP CONSULTATIONS,  
FISHLOW BEGAN HIS RESPONSE BY NOTING HIS DEEP SENSE OF SADNESS  
AND DISAPPOINTMENT. WE CAME, HE SAID, AT THE INVITATION OF THE  
FOREIGN MINISTER, NOT BECAUSE WE DOUBTED THE GOOD FAITH OF THE GOP  
BUT BECAUSE WE WERE SEEKING SOME MEANS OF MAKING A PROMPT, FAIR  
SETTLEMENT POSSIBLE. WE HAD HOPED FOR SUCH A SETTLEMENT  
IN ACCORDANCE WITH NOT ONLY PERU'S BUT WITH OUR OWN LEGAL  
NORMS AND POLITICAL REALITIES. THE GOP RESPONSE CAUSES  
US TO FEAR THAT WE HAVE LOST MOMENTUM AND AN OPPORTUNITY  
TO PUT THIS MATTER BEHIND US. THE GOP WILLINGNESS TO  
COMMIT ITSELF TO PAYING THE AMOUNT DETERMINED BY THE  
AUDITOR'S REPORT, WHILE UNDERSTANDABLE IN POLITICAL TERMS,  
DOES NOT IN OUR VIEW REPRESENT AN ADVANCE. WE  
TOO, HE CONTINUED, HAVE OUR POLITICAL PROBLEMS AND WILL  
PAY A PRICE FOR WHAT WE HAVE UNDERTAKEN. THE USG HAS  
NEVER SOUGHT TO "EMBARGO" PERUVIAN ORE. HOWEVER, MARCONA,  
IN DEFENSE OF ITS OWN LEGITIMATE RIGHTS AND ITS VALUABLE  
ASSETS NATIONALIZED BY THE GOVERNMENT OF PERU, HAS SOUGHT  
TO ASURE THAT ITS PURCHASERS RESPECT THEIR CONTRACT OBLI-  
GATIONS. THE USG HAS, IN FACT, PUT PRESSURE ON MARCONA  
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TO GET MARCONA TO ALTER THAT POLICY IN THE CONTEXT OF THIS  
PROPOSAL, AND THEY AGREED TO DO SO.

8. THE U.S. GROUP HAS SOUGHT TO APPLY ALL OF ITS IMAGINA-

TION TO COME UP WITH AN APPROACH THAT WOULD NOT ONLY SATISFY OUR OWN LEGAL REQUIREMENTS BUT PERU'S POLITICAL NECESSITIES. WE NOW SEEM TO BE BACK WHERE WE STARTED FROM, A DIFFERENCE OVER THE METHODOLOGY TO BE USED TO REACH A COMPENSATION FIGURE. WE CAN ONLY ASK THE GOP COMMISSION TO FIND A WAY TO BRIDGE THE GAP CONSISTENT WITH PERU'S POLITICAL REALITIES AND OUR MUTUAL DESIRE FOR CLOSE AND COOPERATIVE RELATIONS.

9. DE LA PUENTE, OBVIOUSLY UNHAPPY, SAID THAT HE WAS NOT SURPRISED AT THE U.S. GROUP'S REACTION. HE PRAISED FISHLOW'S APPROACH TO THE PROBLEM, HIS TECHNICAL EXPERTISE, PATIENCE AND SKILL AT REPRESENTING U.S. INTERESTS WHILE SINCERELY TRYING TO FIND A MEANS OF RESOLVING THE ISSUES THAT DIVIDE THE TWO COUNTRIES. YET THE DOCUMENT--PRACTICAL AS IT IS--RAISES THE SERIOUS PROBLEM OF A THREAT TO THE GOP'S GOOD FAITH AND THUS CANNOT SERVE AS A PUBLIC BASE FOR AGREEMENT.

10. IN ANOTHER TRANSITION, HE THEN ASKED RUBINA TO DISCUSS CERTAIN ASPECTS OF THE FIGURES FROM A TECHNICAL BASIS. RUBINA'S THESIS WAS THAT SINCE THE GOP WOULD ONLY BE ABLE TO SELL A PERCENTAGE (SLIGHTLY OVER HALF) OF TOTAL PRODUCTION--PRIMARILY TO THE JAPANESE--FISHLOW HAD BEEN WRONG IN FIGURING TOTAL COSTS ON THE BASIS OF 100 PERCENT PRODUCTION. FISHLOW RESPONDED BY SUGGESTING THAT IT WAS OUR REALIZATION OF THIS PROBLEM--THE DIFFICULTY OF SELLING THE ORE--THAT LED US IN PART TO THIS PROPOSAL WHICH WOULD GET THE ORE MOVING AGAIN, CONCENTRATING ON TRADITIONAL PURCHASERS.

11. THE SESSION ENDED WITH DE LA PUENTE'S ASKING THE U.S. GROUP TO REMAIN IN TOWN ANOTHER DAY. THE CABINET MINISTERS WOULD PROBABLY MEET AGAIN THURSDAY MORNING, AND HE HOPED WE COULD BE IN TOWN IN THE EVENT THAT A COMMISSION MEETING THURSDAY AFTERNOON SEEMED WORTHWHILE. THE U.S. GROUP AGREED. IN A BRIEF PRIVATE DISCUSSION BETWEEN EINAUDI  
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AND DE LA PUENTE FOLLOWING THE SESSION, THE LATTER URGED THAT FISHLOW MAKE THE SAME PRESENTATION TO THE PRIME MINISTER, IMPLYING THAT THE LATTER NEEDED TO HEAR IT DIRECTLY FROM HIM.

12. COMMENT: IT WAS OBVIOUS THAT THE COMMISSION, WHICH BELIEVED TUESDAY AFTERNOON THAT THEY HAD THE BASIS OF AN AGREEMENT, HAD BEEN REBUFFED BY THE MINISTERS (PERHAPS WITH THE HELP OF RUBINA AND/OR YATACO). BROUSSET AND DE LA PUENTE, ESPECIALLY, WERE VISIBLY ILL AT EASE DURING THE COURSE OF THE SESSION AND REALIZE PERHAPS BETTER THAN THE OTHERS THE FULL CONSEQUENCES OF A BREAKDOWN.

DE LA PUENTE TOOK PAINS TO SEPARATE THE TECHNICAL DISCUSSION OF THE REVISED U.S. PROPOSAL FROM THE CENTRAL POLITICAL ISSUE, PERHAPS IN THE HOPE THAT THE MINISTERS COULD BE TURNED AROUND. U.S. GROUP HAS BEEN DISCUSSING AMONG ITSELF SOME ALTERNATIVE TO THE ESCROW ACCOUNT THAT WOULD SERVE ESSENTIALLY THE SAME PURPOSE. WHILE PARTICIPATION BY MINPECO INSTEAD OF GOP MIGHT HELP, WE HAVE NOT YET COME UP WITH ANY SOLID SUGGESTIONS.

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